

NOV 14 2008

**FEDERAL ELECTION COMMISSION  
999 E Street, N.W.  
Washington, D.C. 20463**

**FIRST GENERAL COUNSEL'S REPORT**

**MUR: 5974**

**DATE COMPLAINT FILED: February 14, 2008**

**DATE OF NOTIFICATION: February 22, 2008**

**DATE ACTIVATED: April 1, 2008**

**LAST RESPONSE RECEIVED: March 11, 2008**

**EXPIRATION OF STATUTE OF  
LIMITATIONS: December 12, 2012**

**COMPLAINANT: Angela McMillen**

**RESPONDENT: New Summit Republicans**

**RELEVANT STATUTES: 2 U.S.C. § 441d(a)  
2 U.S.C. § 434(c)**

**INTERNAL REPORTS CHECKED: Disclosure Reports**

**FEDERAL AGENCIES CHECKED: Internal Revenue Service**

**I. INTRODUCTION**

Complainant Angela McMillen, a resident of Ohio's Summit County, alleged that the New Summit Republicans ("NSR" or "Respondent") violated the Federal Election Campaign Act of 1971, as amended ("the Act"), based on the contents of a mailed brochure she received on or about December 12, 2007. Complaint at 1. The brochure (a copy of which was attached to the Complaint) contained two photographs of Senator Hillary Clinton (one of which showed her laughing) and the statements "Stop her laughing!" and "We can beat her if we are united." See Attachment 1. The brochure did not contain a disclaimer.

1       The Complainant alleges that because the brochure contains express advocacy and,  
2       presumably, is an independent expenditure, NSR violated 11 C.F.R. § 110.11 by failing to  
3       include a disclaimer. Complaint at 1-2.

4       We received a response to the complaint from Ohio State Senator Kevin Coughlin,  
5       writing on behalf of NSR. Response at 1. NSR requests that the Commission dismiss the  
6       complaint. *Id.* NSR denies that the brochure expressly advocates the defeat of a federal  
7       candidate. *Id.* Lastly, Respondent argues that it is not reasonable to expect that individuals  
8       running for county party central committee would be subject to federal election laws when  
9       state law does not recognize them as candidates or subject them to regulations. *Id.* at 3.

10       Based on the available information, we recommend that the Commission find reason  
11       to believe that the New Summit Republicans violated 2 U.S.C. § 441d(a) by failing to  
12       include the appropriate disclaimer on a public communication that expressly advocated the  
13       defeat of a federal candidate, and violated 2 U.S.C. § 434(c) by failing to file an  
14       independent expenditure report with the Commission regarding the mass-mailed brochure.

15       **II. FACTUAL AND LEGAL ANALYSIS**

16       **A. The New Summit Republicans**

17       According to statements on its website, NSR is composed of candidates for  
18       positions on the Summit County Republican Central Committee and is supported by a  
19       broad-based group of Republican officeholders, candidates, voters, activists, and  
20       contributors. See NSR Website at <http://www.newsummitrepublicans.com/about>. NSR  
21       disapproves of Alex Arshinkoff's leadership of the Summit County, Ohio Republican Party.  
22       Accordingly, one of NSR's goals was to elect a majority of sympathetic representatives to  
23       the Summit County Republican Central Committee in an election held on March 4, 2008

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1 (the same day as the Republican and Democratic Party primaries in Ohio) and oust  
2 Arshinkoff from his position as Chairman of the Central Committee. NSR also states that  
3 one of its goals is to "Develop, field, support, and elect qualified candidates for federal,  
4 state, local offices." *Id.* Finally, NSR lists Republican officeholders, including Ohio's  
5 Republican Congressmen, who can "win" if NSR is supported. *See* NSR Website at  
6 <http://www.newsummitrepublicans.com/about/officeholders.aspx>. According to statements  
7 on its website, NSR is operating from Ohio State Sen. Kevin Coughlin's campaign office.  
8 NSR is not registered with the Commission, the I.R.S., or the Ohio Secretary of State.

9 NSR mailed its brochure in the Fall of 2007 to Republican voters. *See* NSR  
10 Website at <http://www.newsummitrepublicans.com/news/article.aspx?id=67> (criticizing  
11 Arshinkoff for "defending Hillary Clinton" by using party money to file complaints about  
12 the brochure). The Complainant received the NSR brochure in the mail on or about  
13 December 12, 2007. Complaint at 1.

14 NSR failed to achieve a majority of the Summit County Republican Central  
15 Committee in the March 4, 2008 election, and Alex Arshinkoff remains the leader of the  
16 party. As for its ongoing activities, NSR states that it will continue to press for reforms in  
17 the local party organization and "continue to support Republican candidates running for  
18 office." *See* NSR Website at <http://www.newsummitrepublicans.com/index.aspx>.

19 **B. Potential Violations**

20 A communication that expressly advocates the election or defeat of a clearly  
21 identified candidate must include a disclaimer stating whether or not the communication is  
22 authorized by a candidate, an authorized committee of a candidate, or its agents. 2 U.S.C.

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1 § 441d(a).<sup>1</sup> Furthermore, a person must file a statement containing certain disclosures with  
2 the Commission if they make "independent expenditures," that is, expenditures in excess of  
3 \$250 during a calendar year expressly advocating the election or defeat of a clearly  
4 identified candidate and not made in concert or cooperation with or at the request or  
5 suggestion of a candidate, the candidate's authorized political committee, or their agents, or  
6 a political party committee or its agents. See 2 U.S.C. § 434(c)(1); 11 C.F.R. § 109.10.

7 1. *The NSR Brochure Contains Express Advocacy*

8 The NSR brochure contains two pictures of Hillary Clinton with the statements  
9 "Stop her laughing!" and "We can beat her if we are united." Under the Commission's  
10 regulations, "expressly advocating" includes the use of such words as "vote against," or  
11 "defeat" accompanied by a picture of a candidate, as well as "individual word(s), which in  
12 context can have no other reasonable meaning than to urge the election or defeat of one or  
13 more clearly identified candidate(s)." 11 C.F.R. § 100.22(a). Additionally, a  
14 communication expressly advocates pursuant to 11 C.F.R. § 100.22(b) when, taken as a  
15 whole, with limited reference to external events, it could only be interpreted by a reasonable  
16 person as containing advocacy of the election or defeat of one or more clearly identified  
17 candidate(s) because the electoral portion of the brochure is unmistakable, unambiguous,

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<sup>1</sup> Additionally, any communications financed by a political committee through general public political advertising, including mailings, must include a disclaimer regardless of whether the communication expressly advocates the election or defeat of a clearly identified candidate. 2 U.S.C. § 441d(a). NSR asserts that it is not a political committee because it supports an individual who is not a "candidate" under Ohio or Federal law. Response at 2. The Complainant did not allege, and at this time we do not recommend finding, that NSR is a political committee under the Act. NSR may be deemed a political committee if it has received "contributions" or made "expenditures" in excess of \$1,000 and its "major purpose" is the nomination or election of a Federal candidate. See 2 U.S.C. § 431(4)(A); *Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986). Given its likely expenditures on the NSR brochure, NSR may have made over \$1,000 in expenditures. However, despite NSR's references to federal candidates and elections in the NSR brochure and on its website, no information has been presented or is otherwise available to suggest that NSR's major purpose is Federal campaign activity. See *MCFL*, 479 U.S. at 262.

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1 and suggestive of only one meaning, and reasonable minds could not differ as to whether it  
2 encourages actions to elect or defeat the clearly identified candidate or encourages some  
3 other kind of action. *See* 11 C.F.R. § 100.22(b):

4 NSR asserted that the brochure does not expressly advocate the defeat of a federal  
5 candidate because the only individual "named" in the brochure is Alex Arshinkoff,  
6 Chairman of the Summit County Republican Party, who is not a candidate under Ohio or  
7 federal law. Response at 1. Furthermore, NSR asserts that when read in its entirety, the  
8 brochure calls for the unification of the Summit County Republican Party and the ouster of  
9 Mr. Arshinkoff as chairman, that is, it "is about Alex Arshinkoff, not Hillary Clinton." *Id.*  
10 According to Respondent, the Act is inapplicable because the message of the brochure has  
11 nothing to do with Hillary Clinton and whether or not she should be elected President of the  
12 United States. *Id.* at 2.

13 Even though the brochure included content relating to the Summit County  
14 Republican Central Committee, the brochure would nevertheless trigger the disclaimer  
15 requirements if it also expressly advocated the defeat of Hillary Clinton. Importantly, the  
16 Commission's regulations do not exempt from the definition of "expressly advocating" in  
17 Section 100.22 communications that advocate the election or defeat of a federal candidate  
18 while also advocating for the election or defeat of a non-federal candidate, and the  
19 subsections of that definition require only *phrases* or *individual words* that, in context, have  
20 no other reasonable meaning, *see* 11 C.F.R. 100.22(a), or an electoral *portion* that is  
21 unmistakable, unambiguous, and suggestive of only one meaning, *see* 11 C.F.R. 100.22(b).  
22 Further, the Supreme Court in *FEC v. Massachusetts Citizens for Life, Inc.*, in effect,  
23 recognized that a communication could have a non-electoral component and, at the same

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1 time, expressly advocate the election or defeat of a federal candidate by holding that a  
2 corporation's communication constituted express advocacy, despite the inclusion of issue  
3 speech. *See* 479 U.S. 238, 242-250 (1986); *see also* MUR 4313 (Coalition for Good  
4 Government) (holding that a corporation's ad that featured candidate Richard Lugar and  
5 included a picture of a bumper sticker that stated "Lugar for President" was express  
6 advocacy even though much of the ad concerned an environmental issue).

7 The NSR brochure satisfies the definition of "expressly advocating" under both 11  
8 C.F.R. §§ 100.22(a) and 100.22(b). Even though the brochure does not identify Hillary  
9 Clinton by her name, the requirement in each of those provisions that the communication  
10 refer to one or more "clearly identified candidate(s)" is satisfied by the appearance of  
11 Hillary Clinton's photograph. *See* 2 U.S.C. § 431(18) (defining "clearly identified" to  
12 include the appearance of a candidate's photograph); 11 C.F.R. § 100.17 (same). Thus, the  
13 use of the phrase "beat her" in the brochure in connection with Hillary Clinton's picture is  
14 equivalent to the regulation's listed example of using the word "defeat" accompanied by a  
15 clearly identified candidate's picture. *See* 11 C.F.R. § 100.22(a). Moreover, the brochure's  
16 contents lacked any mention of another issue, event, or initiative on which the supporters of  
17 NSR expressed a desire to "beat" Sen. Clinton. Finally, no other meaning of the word  
18 "beat" is consistent with the contents of the brochure. Therefore, in context, the brochure's  
19 use of the word "beat" accompanied by a picture of Hillary Clinton can have no other  
20 reasonable meaning than to urge the electoral defeat of a clearly identified candidate, thus  
21 satisfying the definition of express advocacy pursuant to 11 C.F.R. § 100.22(a). Moreover,  
22 the NSR brochure satisfies the definition of express advocacy in 11 C.F.R. § 100.22(b)  
23 because, when taken as a whole, it could only be interpreted by a reasonable person as

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1 containing advocacy of the defeat of a clearly identified candidate because it contains an  
2 unmistakable and unambiguous electoral portion (photograph of presidential candidate  
3 Hillary Clinton with the phrases "We can beat her . . ." and "Stop her laughing") suggestive  
4 of only one meaning and reasonable minds could not differ as to whether it encourages the  
5 defeat of Hillary Clinton. Consequently, the brochure includes express advocacy within the  
6 meaning of the Act.

7                   2.       *The NSR Brochure Did Not Contain the Required Disclaimer*

8           A communication containing express advocacy that is not authorized by a candidate,  
9 an authorized committee of a candidate or its agents, must clearly state the name and  
10 permanent street address, telephone number or World Wide Web address of the person who  
11 paid for the communication, and state that the communication is not authorized by any  
12 candidate or candidate's committee. 2 U.S.C. § 441d(a)(3). In relevant part,  
13 Section 441d(c) requires that the disclaimer be of sufficient type size to be clearly readable  
14 and be contained in a printed box set apart from the other contents of the communication.

15           At this time, there is no indication that the NSR brochure was authorized by a  
16 "candidate" within the meaning of the Act: as defined at 2 U.S.C. § 431(2), the Act applies  
17 to candidates for federal office and, therefore, neither State Sen. Coughlin, the NSR  
18 candidates for the Summit County Republican Central Committee, nor NSR's choice to  
19 replace Arshinkoff as chairperson are candidates within the meaning of the Act.

20           The disclaimer requirement in Section 441d applies to any person making a "public  
21 communication." 11 C.F.R. § 110.11(a)(2). One form of "public communication" is a  
22 mass mailing, which means a mailing of 500 pieces of mail matter of an identical or  
23 substantially similar nature within any 30 day period. 11 C.F.R. §§ 100.26 and 100.27. In

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1 this case, we do not know with certainty whether NSR mailed more than 500 substantially  
2 similar copies of its brochure within a 30 day period. However, according to publicly-  
3 available information on the Ohio Secretary of State's website, Team Coughlin (Sen.  
4 Coughlin's state candidate committee) reported spending over \$3,700 on printing and  
5 postage between November 26 and December 14, 2007. The disclosed disbursements  
6 include: \$491.94 for printing on November 26, 2007; \$2,060.47 for printing on  
7 December 7, 2007; and \$1,230 for postage on December 14, 2007. This suggests that more  
8 than 500 copies of the NSR brochure were mailed simultaneously and, therefore, that this  
9 was a mass mailing form of public communication that required a disclaimer. NSR's  
10 brochure did not contain a disclaimer. Consequently, we recommend that the Commission  
11 find reason to believe that NSR violated 2 U.S.C. § 441d(a).

12 3. *NSR Did Not Disclose Its Independent Expenditures*  
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14 If NSR's payments for the brochure constitute "independent expenditures" and are  
15 over \$250 in any given year, then NSR must file a statement containing certain disclosures  
16 with the Commission. See 2 U.S.C. § 434(c)(1); 11 C.F.R. § 109.10.

17 NSR's payments for the brochure appear to be independent expenditures because  
18 they expressly advocate the election or defeat of a clearly identified candidate and do not  
19 appear to be made in concert or cooperation with a (federal) candidate, a candidate's  
20 authorized committee, a candidate's agents, or a political party committee or its agents. See  
21 2 U.S.C. § 431(17). Further, it is likely that the cost of creating and mailing the brochure to  
22 the Republican voters of Summit County exceeded \$250. NSR did not file an independent  
23 expenditure report with the Commission. Consequently, we recommend that the  
24 Commission find reason to believe that NSR violated 2 U.S.C. § 434(c).

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10 **IV. RECOMMENDATIONS**

- 11 1. Find reason to believe that New Summit Republicans violated 2 U.S.C.  
12 § 441d(a).  
13  
14 2. Find reason to believe that New Summit Republicans violated 2 U.S.C.  
15 § 434(c).  
16  
17 3. \_\_\_\_\_  
18  
19 4. Approve the attached Factual and Legal Analysis.  
20  
21 5. Approve the appropriate letter.  
22

23 Thomasenia P. Duncan  
24 General Counsel

25  
26  
27 Date: 11/13/08

28 BY:


29   
30 Ann Marie Terzaken  
31 Associate General Counsel  
32 for Enforcement

33   
34 Mark R. Allen  
35 Acting Assistant General Counsel  
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**Attachments:**

**1. NSR Brochure**

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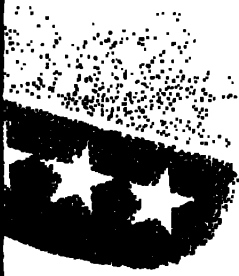
**Michael A. Columbo**  
**Attorney**

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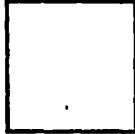
*You  
Unite*

**STOP  
HER  
LAUGHING!**

*"We can beat her if  
we are united. But..."*



New Summit Republicans  
2101 Front St., Suite 205  
Cuyahoga Falls, OH 44221



New Summit Republicans  
2101 Front St., Suite 205  
Cuyahoga Falls, OH 44221

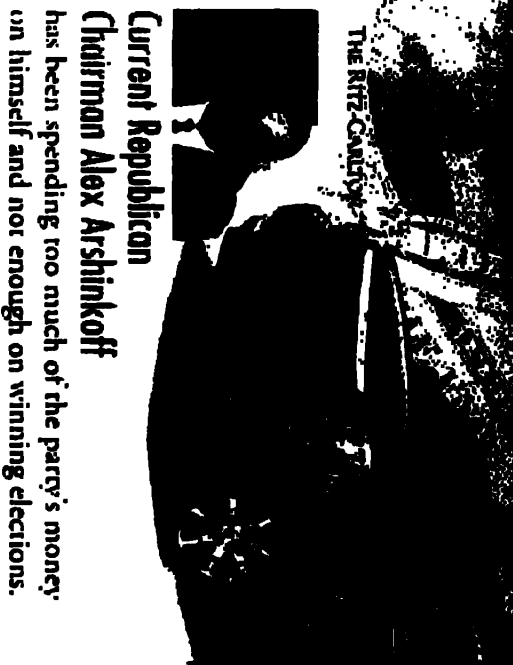


Attachment  
1 of 2



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# Summit County Needs A New GOP Chairman!



## Current Republican Chairman Alex Arshinkoff

has been spending too much of the party's money on himself and not enough on winning elections.

## The Result?

The party is divided, badly in debt, and has a record of 8 wins and 44 losses since 2002.

## Examples of the chairman's extravagant spending:

- Paying over \$900/month to lease Arshinkoff's Cadillac Escalade.
- Buying Arshinkoff \$6,683.97 worth of meals at a posh downtown restaurant in 2006.
- Paying for Arshinkoff's \$5,007.89 tab at Potage Country Club.
- Lavishing well over \$600,000 for the county headquarters, payroll, and administrative operations, such as car washes, detailing and custom drapery.

*That's money that should be spent bearing Democrats and electing Republicans.*

*We need candidates for Central Committee! There is no time commitment to run or serve! Send in this postcard and help make the Summit County Republican Party a winner again! >>>*



## HOW YOU CAN HELP

Stand with us and join the Republican Central Committee where you can vote to remove Alex Arshinkoff and elect a NEW party chairman!

This committee sets the party's rules and elects the party leaders. We are working to win a majority of that committee so we can:

- Elect a NEW party chairman
- Clean up the party's finances
- Recruit qualified candidates to run for office
- Offer more and better services to candidates and officeholders
- Implement tight fiscal controls so donor money isn't squandered
- Involve more people in the party
- WIN ELECTIONS!

**"Yes, I want to help make the party a winner again!"**

*I would like to:*

- ☐ Join the Republican Central Committee and elect a new chairman
- ☐ Write a letter to the editor or call talk radio
- ☐ Allow my name to be used as a supporter of the effort
- ☐ Contribute to the campaign for a new chairman  
(Make checks payable to New Summit Republican Committee)

Name: \_\_\_\_\_

Address: \_\_\_\_\_